

MAY 19 2015

TONY R. MOORE, CLERK
BY _____
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

a

RAFAEL ALBERTO LLOVERA LINARES
A 097-960-199

DOCKET NO. 15-cv-162; SEC. P

a.k.a. Rafael A. Llovera
a.k.a. Rafael A. Linares

VERSUS

JUDGE DEE D. DRELL

SHERIFF'S OFFICE BROWARD COUNTY MAGISTRATE JUDGE JAMES D. KIRK

REPORT AND RECOMMENDATION

Before the court is the pro se civil rights complaint (42 U.S.C. §1983) of Plaintiff Rafael Alberto Llovera Linares. Plaintiff is an immigration detainee in the custody of the Department of Homeland Security/Bureau of Immigration and Customs Enforcement (DHS/ICE). Plaintiff complains about mail delivery and access to the courts at the LaSalle Detention Center in Trout, La.

This matter has been referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. §636 and the standing orders of the Court.

On April 13, 2015, Plaintiff was ordered to amend his complaint to allege non-conclusory allegations and demonstrate that his position as a litigant was prejudiced by the alleged denial of access to the court. Plaintiff's amended complaint was due by May 13, 2015. To date, Plaintiff has failed to comply with the Court's order or to request an extension of time within which to comply.

Law and Application

Federal Rule of Civil Procedure Rule (FRCP) 41(b) permits

dismissal of claims “[i]f the plaintiff fails to prosecute or to comply with ... a court order....” The district court also has the inherent authority to dismiss an action *sua sponte*, without motion by a defendant. See Link v. Wabash R.R.Co., 370 U.S. 626, 630-31 (1962). “The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the [d]istrict [c]ourts.” McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988). Based on Plaintiff’s failure to comply with the Court’s order, dismissal under Rule 41 is appropriate.

Additionally, the U.S. Immigration and Customs Enforcement (ICE) inmate locator service indicates that Plaintiff is no longer in custody. Mail sent by the Clerk of Court to Plaintiff was returned to the Court as undeliverable. Local Rule 41.3 for the Western District of Louisiana provides that “[t]he failure of an attorney **or pro se litigant** to keep the court apprised of an address change may be considered cause for dismissal for failure to prosecute when a notice is returned to the court for the reason of an incorrect address and no correction is made to the address for a period of 30 days.” (Emphasis added.) It is unclear when Plaintiff was released, but he has failed to advise the court of his release or to provide and update address.

Conclusion

For the foregoing reasons, **IT IS RECOMMENDED** that Plaintiff’s

complaint be DISMISSED WITHOUT PREJUDICE pursuant to FRCP 41(b).

Objections

Under the provisions of 28 U.S.C. §636(b)(1)(c) and Fed.R.Civ.P. 72(b), the parties have fourteen (14) calendar days from service of this Report and Recommendation to file specific, written objections with the clerk of court. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. No other briefs or responses (such as supplemental objections, reply briefs etc.) may be filed. Providing a courtesy copy of the objection to the magistrate judge is neither required nor encouraged. Timely objections will be considered by the district judge before he makes his final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) CALENDAR DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT UPON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE TO WHICH THE PARTY DID NOT OBJECT.

THUS DONE AND SIGNED at Alexandria, Louisiana, this 19 day of May, 2015.



JAMES D. KIRK
UNITED STATES MAGISTRATE JUDGE